

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA)	
NATURAL GAS COMPANY, INC. FOR AN)	CASE NO.
ADJUSTMENT OF ITS RATES AND A)	2021-00185
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

ORDER

On November 8, 2021, Delta Natural Gas Company, Inc. (Delta) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for at least five years for its redacted response to Commission Staff's Fifth Request for Information (Staff's Fifth Request), Item 2.

On December 3, 2021, Delta filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for at least five years for its redacted responses and documents provided in response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Items 2 and 16.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ Exceptions to the free and open

¹ KRS 61.872(1).

examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its petitions, Delta argued the application of two provisions of KRS 61.870. KRS 61.878(1)(a) exempts from public disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

NOVEMBER 8, 2021 PETITION

In response to Staff’s Fifth Request, Item 2, Delta filed a document containing redacted addresses and partial account numbers of farm tap customers. Delta argued that customer account information is personal information that should not be in the public domain and should be exempt under KRS 61.878(1)(a).

Having considered the motion and the material at issue, the Commission finds that Delta’s November 8, 2021 petition is granted. Customer addresses and account numbers are of a personal nature and public disclosure would constitute a clearly unwarranted invasion of personal privacy.⁴ The redacted information therefore meets the criteria for

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ See Case No. 2020-00174, *Electronic Application of Kentucky Power Company For (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience*

confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a).

DECEMBER 3, 2021 PETITION

In response to Staff's Post-Hearing Request, Item 2, Delta provided a response with a redacted itemized list of engineering and right-of-way acquisition costs. The total estimated cost of engineering and right-of-way acquisition were not redacted. Delta stated that disclosure of itemized construction cost estimates and right-of-way labor figures would negatively impact the bidding process. Delta also argued that right-of-way acquisition cost estimates would negatively impact Delta in negotiations with landowners.

In response to Staff's Post-Hearing Request, Item 16, Delta provided farm tap drawings generated by a Delta-employed engineer. Delta asserted that the drawings should be protected from disclosure under KRS 61.878(1)(c)(1) because they were prepared at Delta's own expense and utilize Delta's expertise.

Having considered the motion and the material at issue, the Commission finds that Delta's December 3, 2021 petition is granted. Regarding estimated costs, potential bidders could use the itemized estimated construction costs to manipulate the bidding process.⁵ The Commission also finds that confidential treatment is granted for proprietary engineering drawings of farm taps. Delta's competitors could use these designs instead of preparing their own or contracting to obtain designs, helping those competitors at Delta's expense. The designated material therefore meets the criteria for confidential

and Necessity; and (5) All Other Required Approvals and Relief (Ky. PSC Oct. 27, 2020), Order at 3, granting confidential treatment to customer information under KRS 61.878(1)(a).

⁵ See Case No. 2020-00004, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from May 1, 2019 Through October 31, 2019* (Ky. PSC Apr. 9, 2020), Order at 1–2.

treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Delta's November 8, 2021 and December 3, 2021 petitions for confidential treatment are granted.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. Delta shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Delta shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Delta is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no

longer qualifies for confidential treatment in order to allow Delta to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

Commissioner

ENTERED
APR 13 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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